

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-024-13-1-5-20189-15
Petitioner: Universal Equity Partners, LLC
Respondent: Lake County Assessor
Parcel: 45-03-29-182-011.000-024
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Universal Equity Partners, LLC (“Petitioner”) initiated its 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”) on June 10, 2014.¹ The PTABOA issued notice of its determination on April 23, 2015. Petitioner then filed its Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Board’s Administrative Law Judge (“ALJ”), held a hearing on August 22, 2016. Neither the ALJ nor the Board inspected the property.
4. Lake County Hearing Officers Robert Metz and Joseph E. James were sworn as witnesses for Respondent.²

Facts

5. The subject property is a single-family dwelling located at 4425 Baring Avenue in East Chicago.

¹ Indiana Code § 6-1.1-15-1 states that in order to obtain review of an assessment, the taxpayer must file notice not later than 45 days after the date of the notice of the assessment. When no notice of assessment is given, the taxpayer must file notice not later than the later of May 10 of the tax bill year or 45 days after the date the tax bill is issued. Here, there is no indication as to when, if ever, notice of assessment was given. There is also no indication as to when the tax bill was issued or if Petitioner was ever in possession of it. Nonetheless, Respondent accepted Petitioner’s notice to initiate the appeal, date-stamped it accordingly, and did not raise timeliness as an issue. Consequently, the Board will not address the timeliness of the initiation of the appeal.

² Attorney John P. Reed represented Petitioner.

6. The 2013 assessed value was \$8,200 for the land and \$53,600 for the improvements, for a total of \$61,800.
7. Petitioner requested a value of approximately \$50,000.

Record

8. The official record contains the following:

- a. A digital recording of the hearing

- b. Exhibits:

Petitioner Exhibit 1:	Lake County Sheriff's Official Receipt
Petitioner Exhibit 2:	CMA Report
Petitioner Exhibit 3:	Sheriff's Deed

Respondent Exhibit 1:	2013 property record card for the subject property
Respondent Exhibit 2:	MVP Printout of property transfers of the subject property
Respondent Exhibit 3:	Sales disclosure form for the subject property dated 5/2/2014
Respondent Exhibit 4:	Sales disclosure form for the subject property dated 6/16/2014

Board Exhibit A:	Form 131 petition
Board Exhibit B:	Notice of Hearing
Board Exhibit C:	Hearing sign-in sheet

- c. These Findings and Conclusions.

Burden

9. Generally, a taxpayer seeking review of an assessing official's determination has the burden of proving that a property's assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 465, 468 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 594 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 "applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year." Ind. Code § 6-1.1-15-17.2(a). "Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is

correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code 6-1.1-15-17.2(b).

11. Second, Ind. Code 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).
13. The assessed value decreased from \$62,700 in 2012 to \$61,800 in 2013. Petitioner, therefore, has the burden of proof.

Contentions

14. Petitioner’s case:
 - a. Petitioner presented a Lake County Sheriff’s official receipt for the subject property. The receipt indicates Petitioner paid \$20,915 for the property on May 2, 2014. Petitioner acknowledges that the sale was a distressed sale and not necessarily indicative of what the property is actually worth. *Reed argument; Pet’r Ex. 1.*
 - b. While the sheriff’s sale occurred on May 2, 2014, the sheriff’s deed conveying the subject property to Petitioner was not issued until July 17, 2014. However, Petitioner’s counsel believes the bid to purchase the property was made and accepted in 2013 during the relevant time that would afford Petitioner “some right” to appeal. *Reed argument; Pet’r Exs. 1 & 3.*
 - c. Petitioner presented a comparative market analysis report showing recent sales in the surrounding area. While the subject property consists of 1,344 square feet, the properties included in the report range from approximately 1,000 square feet to approximately 2,900 square feet. The sales prices of the properties included in the report range from approximately \$39,000 to \$60,000. Petitioner believes the property most similar to the subject with regard to age, size, and quality, is the one located at 4435 Northcote. It sold for \$52,900 on January 11, 2016. Based on this data, even though Petitioner acknowledges the sales are well outside of the relevant valuation period, Petitioner contends the subject property should be valued at “around \$50,000.” *Reed argument; Pet’r. Ex. 2.*

15. Respondent's case:
- a. Respondent contends that Petitioner's comparable sales are well outside the valuation period for a 2013 appeal. More importantly, Respondent notes that the sales disclosure form showing the sale from the Lake County Sheriff to Petitioner is dated May 2, 2014 and that the transfer record shows the change in ownership was not complete until July 17, 2014. Respondent also introduced a second sales disclosure form dated June 17, 2014, which shows a sale from Petitioner to a third party. Counsel for Petitioner admittedly had no knowledge of the second sales disclosure form until the hearing. Consequently, Respondent's ultimate contention is that it is unclear as to who owned the property, paid the taxes, or was responsible for paying the taxes, with regard to the year at issue, and whether or not Petitioner has standing to bring the appeal. *James testimony; Metz testimony; Resp't Exs. 2-4.*

ANALYSIS

16. Real property is assessed based on its "true tax value", which means "the market value-in-use of a property for its current use, as reflected by the utility received by the owner or by a similar user, from the property." 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2); *see also* Ind. Code § 6-1.1-31-6(c). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques used to calculate market value-in-use. MANUAL at 2. Assessing officials primarily use the cost approach. MANUAL at 3. The cost approach estimates the value of the land as if vacant and then adds the depreciated cost new of the improvements to arrive at a total estimate of value. MANUAL at 2. Any evidence relevant to the true tax value of the property as of the assessment date may be presented to rebut the presumption of correctness of the assessment, including an appraisal prepared in accordance with generally recognized appraisal standards. MANUAL at 3.
17. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f).
18. Before reaching the merits of the case, the Board must determine if Petitioner had standing to bring the appeal. Respondent contends the evidence does not show that Petitioner was the owner in 2013 and that it is unknown who paid, or who was responsible for paying, the taxes for that year.
19. Under the Board's regulations, a "[p]arty" includes the "(1) the owner of the subject property[, or] (2) [t]he taxpayer responsible for paying the property taxes payable on the subject property...". 52 IAC 2-2-13. The sheriff's sale receipt and sheriff's deed conveying the subject property to Petitioner were issued on May 2, 2014, and July 17, 2014, respectively. There was also apparently a second sale from Petitioner to a third party that occurred on June 17, 2014. There is no evidence in the record to show

Petitioner was the owner of the subject property on March 1, 2013, or that Petitioner paid, or was responsible for paying, the 2013 taxes.

20. Petitioner argues that a bid to purchase the property was made and accepted sometime during 2013, although precisely when is unclear, that would afford Petitioner “some right” in the property. However, Petitioner presented no evidence to support that contention. Statements that are unsupported by probative evidence are conclusory and of little value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998); and *Herb v. State Bd. of Tax Comm’rs*, 656 N.E.2d 890,893 (Ind. Tax Ct. 1995).

CONCLUSION

21. The Board finds that Petitioner did not show that it had standing to appeal the 2013 assessment. The Board, therefore, need not address the valuation of the subject property and finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 assessed value should not be changed.

ISSUED: November 21, 2016

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court’s rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court’s rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.